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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

MAR 27 1991

Federal Communications Commission
Office of the Secretary

In re Application of)

COMMUNITY TELEVISION OF)
SOUTHERN CALIFORNIA)

File No. BPET-881012KE

For construction permit for)
a new noncommercial educational)
television station to operate on)
Channel *39 in)
Bakersfield, California)

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MAR 29 1991

To: The Commission

VIDEO SERVICES

OPPOSITION OF
COMMUNITY TELEVISION OF SOUTHERN CALIFORNIA
TO INFORMAL OBJECTIONS

Community Television of Southern California ("CTSC"),
applicant for a new noncommercial educational television
station to operate on Channel *39 in Bakersfield, California
hereby submits this Opposition to the Informal Objections
("Objection") filed on January 15, 1991, by the Committee on
Media Integrity ("COMINT"). In that Objection, COMINT
incorporates by reference its Informal Objections ("Informal
Objections") to the grant of CTSC's application for renewal
of license of noncommercial educational television Station
KCET, Los Angeles, California, and its Reply to CTSC's Op-
position to the Informal Objections.

As stated in CTSC's Opposition to the Informal

tion ("Supplement"),^{1/} COMINT's claims are meritless. First, COMINT has failed to state specific and material facts sufficient to warrant Commission investigation or other action in response to the Objection. Second, as demonstrated in detail in CTSC's Opposition and Supplement, COMINT's claims are factually wrong, seek to impose obligations on CTSC not required by the Commission's rules, or raise issues the Commission has found irrelevant.

Third, the real substance of COMINT's complaint is its dissatisfaction with the alleged political content of some of CTSC's programs. Having failed to convince the Board and management of CTSC of the error of their ways, it seeks Commission involvement to correct this perceived imbalance in KCET's programming. COMINT's claims ignore the substantial educational, cultural, children's and other programming which CTSC offers area and its commitment to serve the public interest by fulfilling its educational and public service mission. However, without regard to COMINT's myopic view of the public interest, grant of the relief it seeks is barred by the First Amendment.

Summary of Argument

In its Informal Objections and Reply, COMINT claims that (a) CTSC's Board of Directors does not exercise adequate control over Station KCET and, specifically, has failed to

^{1/} Copies of those pleadings are attached hereto for the Commission's convenience.

adopt standards for controversial issue programming, (b) CTSC has misrepresented the members of its Board as "directors" since they allegedly serve only as fundraisers, (c) CTSC has failed to give the public a role in the operation of the station, (d) CTSC's Community Advisory Board is not reasonably representative of the community, and (e) CTSC has not complied with the open meeting requirements of the Public Broadcasting Act of 1967, as amended. These transgressions, it argues, preclude the Commission from making the public interest finding required by Section 309 of the Communications Act. However, COMINT has not supported any of these generalized claims with specific factual allegations as required nor has it substantiated them with a declaration of someone with personal knowledge. Thus, the claims must be

COMINT's claims concerning CTSC's alleged exclusion of the public from its programming decisions are also without merit. As a noncommercial station dependent on viewer support, CTSC is acutely sensitive to public reaction to its programming. In addition, CTSC undertakes a formal ascertainment of community problems and works regularly with its Community Advisory Board to assure that its program service is responsive to community concerns. COMINT's claim that that advisory group is not representative of the community is insupportable.

COMINT's suggestion that CTSC should appoint an "ombudsman" is not required by any Commission rule or policy, will not provide any assurance that the station's programming is responsive to public concerns, and is inconsistent with the statutory scheme of the Communications Act. Similarly.

However, as the Commission has historically recognized, such Commission involvement in the editorial policies of its licensees violates the First Amendment.

I. COMINT Has Not Stated Specific, Material Facts That Warrant Designation of CTSC's Renewal Application for Hearing or the Imposition of Any Conditions

Although the procedural rules governing informal objections are less stringent than the comparable rules governing petitions to deny, the Commission has held that both informal objections and petitions to deny must contain specific allegations of fact sufficient to warrant the relief requested. Area Christian Television, Inc., 60 RR 2d 862, 864 (1986). See also Los Angeles Area License Renewal Applications, 68 FCC 2d 75, 76 (1978). A review of COMINT's Informal Objections and its Reply shows that its allegations are based on broad generalizations and lack this required degree of specificity. Moreover, COMINT's claim that CTSC admitted the truth of those charges by not denying them in its Opposition is absurd. As shown below, COMINT's claims are baseless.^{2/}

^{2/} While CTSC's Opposition focused largely on the untimeliness of COMINT's Objections and the lack of relevance or materiality of COMINT's claims, CTSC denied COMINT's allegations that CTSC's Board of Directors did not discharge its obligations to supervise the operation of Station KCET, Opposition at p. 7, and specifically rebutted COMINT's claim concerning the lack of access to CTSC's principals. Id. at pp. 7-8. In all events, even if CTSC did not specifically controvert COMINT's claims, that does not mean that CTSC admitted them. Cf. 47 C.F.R. § 1.229(d).

COMINT argues essentially that the following factors preclude the Commission from granting CTSC's application for Channel *39:

1. That CTSC's board of directors are nothing more than fundraisers and have failed to exercise the requisite control over the operation of Station KCET;
2. That CTSC has not adopted broadcast standards for controversial issue programming.
3. That, due to the alleged lack of control over CTSC's operations by the Board, CTSC's representations that the members of the Board are "directors" constitutes a misrepresentation;
4. That the members of the CTSC Board of Directors are selected in secret without public input;
5. That CTSC has not given the public a sufficient role in the operation of Station KCET and has denied COMINT access to the station;
6. That CTSC has allegedly failed to comply with the "open meeting" requirement set forth in the Public Broadcasting Act and codified in Section 396(k)(4) of the Communications Act.
7. That CTSC's Community Advisory Board is not reasonably representative of the community.

These allegations are addressed below.

A. The Role of CTSC's Board of Directors

COMINT maintains that "except for fund-raising, [CTSC's board members] are mere dummies . . . [who] have shirked their duties and responsibilities of oversight and allowed the [KCET] staff to run the station as they please" Reply at 3. COMINT has not fleshed out these generalizations nor has it provided any substantiation of the claims by a person with personal knowledge. Consequently,

these naked assertions are patently insufficient to designate CTSC's renewal application for a hearing or to impose any other sanction or condition on CTSC. See Area Christian Television, Inc., supra.^{3/}

More importantly, however, these claims are simply wrong. As demonstrated in the Declaration of Stephen Kulczycki, Senior Vice President and Station Manager of CTSC, attached hereto ("Declaration"), the CTSC's Board is closely involved with the station, establishing policies for its governance, exercising oversight over KCET's personnel, programming and financial matters and, in general, assuring that the station is fulfilling its educational and public service mission.

CTSC's Board of Directors meets bi-monthly and its Executive Committee meets in the alternative months to review station operations and other matters of concern. Declaration at ¶¶ 3-4. At each Board meeting, the Board is briefed and invited to comment on the station's programming plans and developments, is advised of developments in the industry which may affect CTSC, is provided with financial information

the Board and station management on other operational matters. Id. at ¶ 4.

CTSC's Board has developed, in consultation with the station's staff, CTSC's "Guidelines for Governance" of the station, a ten page document setting forth the responsibilities of CTSC's directors. See Exhibit 1 to Declaration. Id. at ¶ 2. As indicated in that document, the directors are charged with "monitor[ing] the President's performance," "review[ing] and evaluat[ing] the various functions of KCET to determine that they are consistent with its stated mission," and "tak[ing] whatever steps as may be necessary or appropriate to insure KCET's financial integrity" The Guidelines also provide that directors should be "mindful that it is his or her responsibility to plan, authorize and review overall policies and procedures"

Pursuant to that mandate, the Board selects the officers of CTSC, and the Compensation Subcommittee of the Executive Committee reviews their compensation and their relative responsibilities. Id. at ¶¶ 5-6. For example, the Station Manager has been charged with "acquir[ing] and schedul[ing] programs of the highest quality," "produc[ing] a broad and diverse schedule of programs . . . , " and "maintain[ing] the quality and character of KCET's program schedule." Id. at ¶ 5. The Compensation Subcommittee also reviews and approves the compensation schedule for other employees. Id.

The Strategic Planning Committee of the Board is responsible for overseeing long range planning for CTSC in the dynamic and evolving broadcast industry. It has developed a Mission Statement for the station and is currently working on new Corporate Goals, a three-year financial plan and a program policy statement. These efforts are part of a program to update and revise a five-year plan that was adopted by the Board, after full debate, approximately five years ago. When completed, the Mission Statement, Corporate Goals, financial plan and program policy statement will be reviewed and rigorously debated by the Executive Committee and the full Board before formal approval and adoption of the ultimate documents by the Board. Id. at ¶ 7.

The Finance Committee formulates the financial policies and procedures followed by CTSC. The Finance Committee meets with KCET's President and Chief Financial Officer at least every two months to review in detail KCET's proposed budget, interim financial statements and cash flow information. Id. at ¶ 8. The Finance Committee also reviews the budget submitted by management prior to consideration of that budget by the Executive Committee and the Board. The final budget is ultimately adopted by the full Board. Id. The Audit Committee reviews the report of CTSC's outside auditors to assure that the station's fiscal affairs are in order and to review suggestions for improvements made by the auditors. Id.

Finally, the Chair of CTSC's Community Advisory Board is a member of the CTSC Board and the Chair of the Community Relations Committee of the Board also attends CAB meetings to

Although COMINT might prefer that the Board exercise more direct control over the day-to-day decisions and adopt written policies that can be reviewed by others, the Commission does not require either. Rather, the Commission has consistently held that the governing board of licenses are required to establish basic station policies, but they may delegate day-to-day operational duties and responsibilities to management. Id.^{5/} The CTSC Board has decided to govern operation of the station in that manner and closer day-to-day control is not required.^{6/}

^{5/} The California Corporate Code is similar. Thus, Section 5210 provides that a board of directors

may delegate the management of the activities of the corporation to any person or persons, management company, or committee, however composed, provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board.

Cal. Corp. Code § 5210 (West Supp. 1991) (emphasis added). Section 5321 of the Code provides that:

[i]n performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by (1) One or more officers or employees of the corporation whom the director believes to be reliable and competent
... .

Id. at § 5231.

^{6/} In its Opposition, CTSC maintained that, since Station KCET was fulfilling its obligations under the Commission's rules to provide educational and instructional programming to the Los Angeles area, any failure by the CTSC
(continued...)

B. Selection of the Members of the Board

Similarly, COMINT's challenge to the manner in which the members of the Board are selected is meritless. It contends that the "board is dominated and controlled by the staff, which is able . . . to prevent the accession to the board of any person who would . . . challenge the perceived lack of balance and diversity . . . " in political programs, and seeks a requirement that at least some members of the Board be selected by CTSC's members. Reply at 3. Even assuming arguendo that COMINT is correct, which CTSC does not, COMINT's claims do not set forth any basis for the Commission action.

There is nothing in the Commission's rules about the manner by which members of the governing board of a noncommercial licensee shall be selected, and the Commission routinely grants noncommercial authorizations to both non-profit membership corporations, where the governing board

6/(...continued)

Board to fulfill its fiduciary obligations was, under the Commission's decision in Community Television of Southern California, 72 FCC 2d 349, 350 (1979), a matter of California law and thus was not relevant here. Opposition at 7. In response, COMINT launches one of its more outrageous, scurrilous and defamatory comments, essentially charging that, because the wife of the former California Attorney General is a member of the CTSC Board, it would be "folly" to depend on state regulation. See Reply at 5. There is absolutely no basis for COMINT's position and, in making it, COMINT would seem to have violated Section 1.52 of the Commission's rules. That rule provides that the signature on a pleading constitutes a "certificate" that "there is good grounds to support" the pleading. Neither Mr. Perkins nor Mr. Horowitz could have any such basis for this claim.

is selected by the members, and non-stock, non-membership corporations, where the governing board is self-perpetuating. See Notice of Inquiry in MM Docket No. 89-77, 4 FCC Rcd 3403 (1989). Indeed, the Commission has specifically addressed and rejected claims that members of the boards of noncommercial licensees should be elected by "members" of the station. Community Television of Southern California, 72 FCC 2d 349, 350 (1979)

Nor is there anything in the Commission's rules which preclude the staff of a public television station from "dominating and controlling" the selection of the members of the governing board. Rather, the sole question is whether the board, however selected, is selected in accordance with the laws of the state of incorporation and properly supervises the activities of the station. COMINT has not alleged, and cannot allege, that the CTSC board members are selected in a manner that is inconsistent with California law. And, as shown above, the CTSC Board more than adequately discharges that responsibility.

C. Misrepresentation.

COMINT also claims that CTSC has misrepresented facts to the Commission by "representing that the named persons [serving on CTSC's Board] were directors, implying that they really acted as such, without disclosing their actual role, [is solely to raise funds]." Reply at 4; Informal Objection at 2-3. Citing FCC v. WOKO, Inc., 329 U.S. 223 (1946),

COMINT suggests that this alleged misrepresentation is grounds for denying CTSC's license renewal.

This claim is outrageous. First, the claim is nothing more than a reformulation of COMINT's unsubstantiated allegation that CTSC's Board has failed to exercise control over KCET. There is no basis for that claim, and thus there can not be any basis for the misrepresentation charge. Second, the claim is facially insufficient. Allegations of misrepresentation must include an element of an intent to deceive the Commission. Armando Garcia, 3 FCC Rcd 1065, 1067 (Rev. Bd. 1988). COMINT's Reply fails to satisfy the requirement, and there is no basis for alleging any such intent. Scott & Davis Enterprises, 88 FCC 2d 1090, 1099 (Rev. Bd. 1982). COMINT's allegation is pure speculation; it cannot support a serious charge such as misrepresentation. Alabama Citizens for Responsive Public Television, Inc., 73 FCC 2d 615, 620 (1979).^{7/}

D. The Public's Role in KCET.

of access to information concerning CTSC. Reply at 4. The claim as to COMINT's lack of access and CTSC's exclusion of the public are specious.

As demonstrated in the Affidavit of William H. Robin attached to CTSC's Opposition and in Exhibit 3 to the Declaration, CTSC has afforded COMINT's representatives numerous opportunities to meet with CTSC's management and Board members. Opposition at 8, and Declaration of Mr. William H. Robin, attached thereto. As shown in Exhibit 3 to the attached Declaration, there have been 31 communications or meetings between senior station management or members of the Board and either Mr. Perkins or Mr. Horowitz since June 1987.^{8/}

Further, CTSC obtains substantial information from the public concerning its programming, not the least of which is the substantial volume of mail and telephone calls from its viewers and members. Since KCET is a noncommercial station which is largely dependent on contributions from its viewers, those viewers have a rather direct voice concerning

^{8/} COMINT also complains that CTSC has not allowed COMINT representative to address the CTSC Board. However, there is no requirement under the Communications Act or the Commission's rules that licensees, whether commercial or noncommercial, permit members of the public or others to address their governing boards. Consequently, CTSC's unwillingness to allow COMINT to address its Board does not afford any basis for denying CTSC's application. There is no such requirement under the Public Broadcast Act either, assuming the Commission had some responsibility to enforce the provisions of that Act. In fact, Section 396(k)(4) only requires open meetings; it does not require that the public be given an opportunity to speak.

its programming, and both KCET's Board and management are sensitive to the public's views. CTSC employs a staff of four full-time employees to handle the approximately 135,000 contacts it receives each year from the public. Viewer response is reported to management on a regular, periodic basis, and, where appropriate, individual inquiries are referred to management for direct response. Declaration at ¶ 9.

KCET also conducts a formal ascertainment of community needs and problems, and employs its Community Advisory Board to evaluate the programming needs of the community as a whole, as well as of various segments of the community. Id. That Board also facilitates the station's efforts to reach out to the community with services and programs related to CTSC's broadcast efforts. Id. at ¶ 6.

In addition, since July 1989, Station KCET has produced and broadcast a series of short programs entitled "Talk Back," in which the host reads excerpts from viewers' letters, portions of recorded viewers' phone calls are played, and/or a viewer is given approximately two minutes to express his or her views concerning the operation of the station. A new Talk Back program is broadcast every Friday evening at 7:30 p.m., except during pledge periods and other special situations, such as coverage of the Gulf War. To date, more than 70 programs have been broadcast reflecting a

variety of views, both pro and con, concerning the station's programming.^{9/}

This state of affairs, however, is apparently not acceptable to COMINT. It seeks the creation of an full-time "ombudsman," paid by CTSC but independent of the KCET staff, who would not only review all programming in advance for "fairness" and "objectivity," but would also be "given broadcast time in which to comment on programming." Informal Objections at 7.^{10/} CTSC has declined to adopt COMINT's proposal -- not because it wants to preclude the public from expressing its views as to programming decisions, but because CTSC does not believe that delegating programming responsibility in this manner is an appropriate way to manage a public television station or to discharge its responsibilities under the Communications Act to serve the public interest.

Indeed, there is no assurance that an ombudsman, however selected, would be more responsive to community views

^{9/} Mr. Horowitz was offered the opportunity to appear on Talk Back but declined the offer. Declaration at ¶ 10.

^{10/} It is not clear who would select the proposed ombudsman. Given COMINT's accusations that KCET's programming is excessively biased, it presumably would not allow CTSC to name such a person. In fact, Mr. Horowitz has suggested that CTSC hire "a self-identified Republican or conservative in an executive programming position" and that CTSC "create an advisory group of conservatives who will function as outside consultants in the planning stage of future KCET programs and productions" See Letter from David Horowitz to Stephen Kulczycki dated September 3, 1990, at 4, attached hereto as Attachment B.

than the licensee itself. As the Supreme Court noted in an analogous situation, granting the right to a third party to decide which programs will be broadcast results in "a transfer of control over the treatment of public issues from the licensees who are accountable for broadcast performance to private individuals who are not." Columbia Broadcasting System v. Democratic National Committee, 412 U.S. 94, 124 (1973) ("CBS").^{11/}

E. Open Meetings.

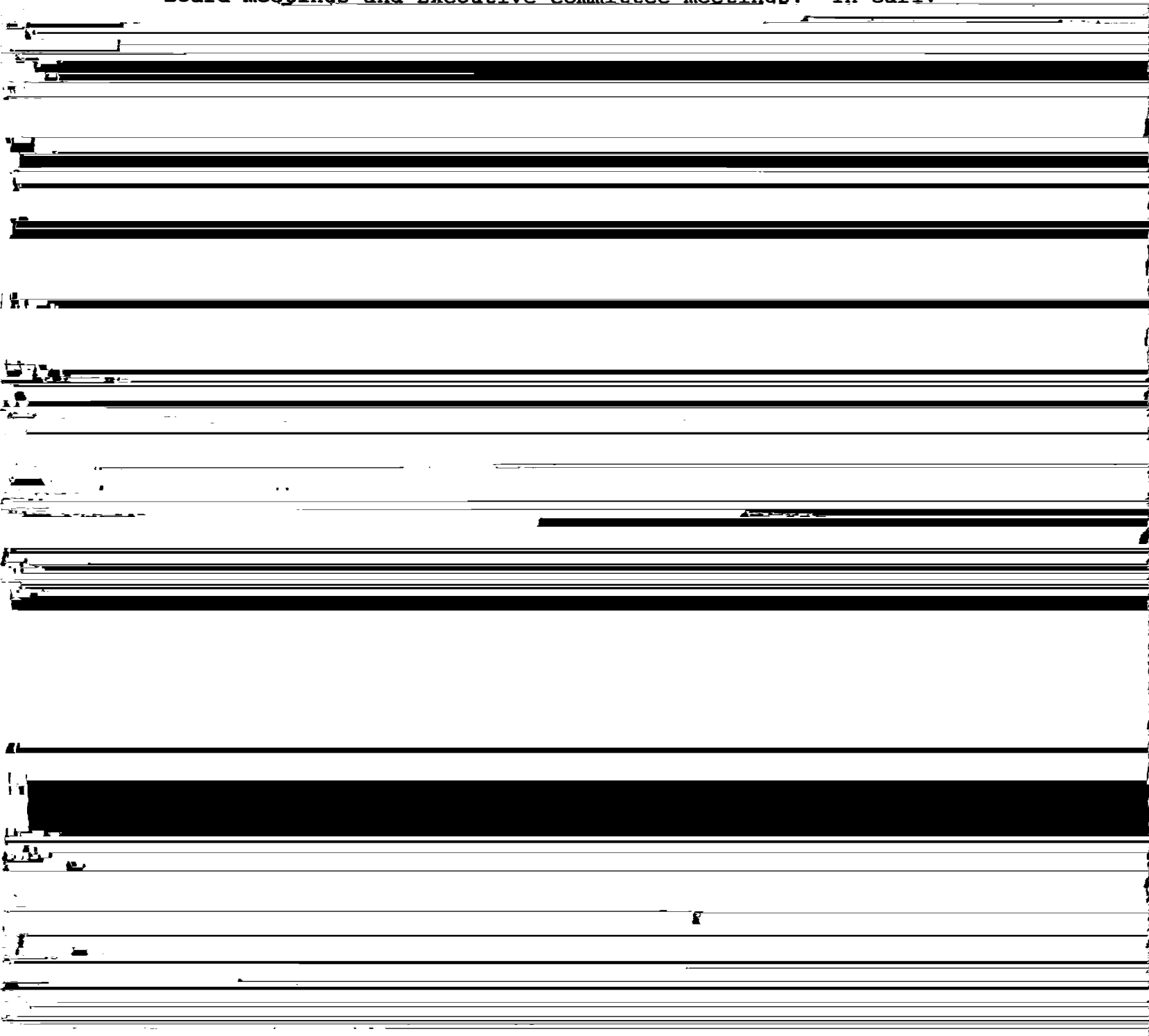
COMINT also alleges that CTSC has failed to comply with the "open meeting" requirement of the Public Broadcasting Act. See 47 U.S.C. § 396(k)(4), Reply at 5-6. Citing Community Television of Southern California v. Gottfried, 459 U.S. 490 (1983), it disputes CTSC's position that the Commission does not have jurisdiction over this matter and argues that, while the Commission does not have primary jurisdiction to enforce those statutory requirements, it must take the

^{11/} It should also be noted that, while COMINT frequently alludes to an obligation that CTSC broadcast fair, objective

alleged violations into account in its decision as to whether the renewal of CTSC's license is in the public interest.

Reply at 6-7.

COMINT's claims are without merit. First, it has always been CTSC's policy to comply with the requirements of Section 396(k)(4), and CTSC has given public notice of its Board meetings and Executive Committee meetings. In early



Second, the Commission has already rejected the theory that violations of the "open meetings" requirement are material to whether the renewal of a license is in the public interest. Application of KOED, Inc. for Renewal of Non-Commercial Licenses, 77 FCC 2d 973 (1980), recon. denied, 88 FCC 2d 1152, 1164-65 (1982). And the Court of Appeals, relying in part on Gottfried, supra, affirmed the

12/(...continued)

for closing the meeting. As its title denotes, the nominating committee's function is to suggest the names of individuals who might be asked to serve on the CTSC Board. Many of those candidates are respected and prominent individuals in the Southern California area, and frequently they do not know that they are under consideration for a Board position at the time their names are first considered by the Committee. Having them learn from others that they were being considered before the Committee decides to extend the invitation may well offend them; so too, they might be upset to learn that they were considered for the Board, but the Committee decided to ask someone else to serve.

Moreover, the Committee must discuss matters concerning the qualifications of potential Board members, including rumors which may well not be true. Requiring that this discussion take place in an open meeting with members of the public and the press in attendance would either severely limit vitally important discussion or subject innocent individuals to embarrassing, but unfounded, charges. It could also conceivably subject committee members to potential claims for defamation, invasion of privacy, or other claims. Frank evaluations of candidates, both new and those eligible for re-nomination, would also be hampered by public debate. As such, closing the committee meetings comes well within the language of Section 396(k)(4) exempting from the open meetings requirement "sessions to consider matters relating to individual employees, proprietary information, litigation and other matters requiring the confidential advice of counsel, commercial or financial information obtained from a person on a privileged or confidential basis, or the purchase of property or services whenever premature disclosure of such purchase would compromise the business interests of any such organization." This provision was manifestly intended to protect from public disclosure the very types of private and confidential considerations involved in the nominating process.

Commission's decision on this issue. California Public

F. The Community Advisory Board

COMINT charges that CTSC's Community Advisory Board ("CAB") is not sufficiently representative of the community. While acknowledging that the CAB includes "representatives of a number of special interest," COMINT complains that it does not include any representatives of "our committee . . . namely a body of opinion that is concerned with KCET's broadcasts and desires more balance in public affairs programming

13/ COMINT also contends that under Section 73.3591(a)(3) of the Commission's rules a hearing is required before they can grant CTSC's renewal application since CTSC is allegedly violating Section 396(k)(4) of the Act. While that section provides that the Commission may grant an application without a hearing where the "applicant not in violation of the provisions of the Act,"

and documentaries that are perceived to be slanted." Informal Objection at 6.

As is the case with the open meetings charge, the requirement that certain public television licensees have community advisory boards is a feature of the Public Broadcasting Act and compliance with that requirement is tied to the receipt of funds from the CPB. Thus, the Commission does not have regulatory responsibility for enforcing this provision. In fact, Section 396(k)(8)(E) specifically provides that the cut-off of funds from CPB "shall be the exclusive remedy for enforcement of this" requirement. 47 U.S.C. § 396(k)(8)(E).

Nonetheless, CTSC's CAB is representative of the community served by Station KCET. The CAB consists of twenty-four individuals drawn from the various groups and communities which make up the greater Los Angeles area, and Kern County. See Exhibit 2 to Declaration. Individuals are asked to serve on the CAB to achieve a reasonable representation of the diversity that characterizes the area served by KCET and the CAB's membership reflects the cultural, ethnic and socio-economic diversity of Southern California. Id. As such, its make-up fully complies with the mandate of Section 398(k)(8)(A) that "the composition of [the] advisory board are [sic] reasonably representative of the diverse needs and interests of the communities serviced by such stations." While COMINT might like CTSC to use a political litmus test

for some members of the CAR. there is no requirement under

intrusion into the journalistic function. See, e.g., In re Complaints of Central Intelligence Agency and American Legal Foundation, 58 RR 2d 1544, 1549 (1985); In re Complaint of American Legal Foundation, 57 RR 2d 1169 (M. Med. Bur. 1985), review den'd, FCC 85-556 (released October 18, 1985).^{15/} See also New York Times Co. v. U.S., 403 U.S. 713, 716-17 (1971)(Black, J., concurring).^{16/} Thus, it has often held that review of a licensee's programs for alleged bias would "be inconsistent with the First Amendment . . . [because it]

^{15/} Indeed, the Commission has stated that the reasons for proscribing government intrusion into the editorial discretion of print journalists provide the same basis for proscribing such interference into the editorial discretion of broadcast journalists. The First Amendment was adopted to protect the people not from journalists, but from the government. It gives the people the right to receive ideas that are unfettered by government interference.

Syracuse Peace Council, 2 FCC Rcd 5043, 5057 (1987)(emphasis in original).

^{16/} As Mr. Justice Powell observed:

[T]he First Amendment serves to foster the values of democratic self-government . . . in several senses. [It] bars the state from imposing upon its citizens an authoritative vision of the truth. It forbids the state from interfering with the communicative processes through which its citizens exercise and prepare to exercise their rights of self-government. And the Amendment shields those who would censure the state or expose its abuses.

Herbert v. Lando, 441 U.S. 153, 184-85 (1979) (footnotes omitted) (Powell, J., concurring).

would involve the Commission deeply and improperly in the journalistic function of broadcasters." The Selling of the Pentagon, 30 FCC 2d 150, 152 (1969). That function "necessarily involves selection and editorial judgment," id., and the Courts have made it clear that the First Amendment precludes governmental review of those types of decisions. CBS, 412 U.S. at 124-25. See also, National Organization for Women v. FCC, 555 F.2d 1002, 1010-11 (D.C. Cir. 1977).

Yet it is just this kind of intervention that COMINT seeks here. It complains that KCET's programming is "unfair," "unbalanced" and lacks "objectivity," and requests that the Commission impose a series of conditions on CTSC's renewal that will purportedly address these perceived problems and cure these alleged defects. This relief manifestly seeks Commission supervision of the very subject matter of CTSC's public affairs programs -- programs which lie at the heart of the First Amendment protections -- and requires the Commission to judge whether CTSC has satisfied these inherently subjective criteria. This intrusion by the Commission into the very content of CTSC's most sensitive programming is precisely what the First Amendment precludes the government from doing. Democratic National Convention Television Coverage, 16 FCC 2d 650 (1969).

Indeed, as the Commission has long recognized, the First Amendment prohibits it from taking actions that "might be, or [might] even appear to be, an interference in the